

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Luis E. Luciani, Jr. et al.	§	Confirmation No.:	9421
		§		
Serial No.:	10/728,465	§	Group Art Unit:	2151
		§		
Filed:	12/5/2003	§	Examiner:	K. Q. Dinh
		§		
For:	Method and System For	§	Docket No.:	200314490-1
	Switching Between Remote§			
	Console Sessions	§		

APPEAL BRIEF

Mail Stop Appeal Brief – Patents

Commissioner for Patents

PO Box 1450

Alexandria, VA 22313-1450

Date: August 11, 2008

Sir:

Appellants hereby submit this Appeal Brief in connection with the above-identified application. A Notice of Appeal is being electronically filed herewith.

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I. REAL PARTY IN INTEREST

The real party in interest is Hewlett-Packard Development Company, L.P. (HPDC), a Texas Limited Partnership, having its principal place of business in Houston, Texas. HPDC is a wholly owned affiliate of Hewlett-Packard Company (HPC). The Assignment from the inventors to HPDC was recorded on December 5, 2003 at Reel/Frame 014776/0913.

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II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals or interferences.

III. STATUS OF THE CLAIMS

Originally filed claims: 1-20.
Claim cancellations: 7-13.
Added claims: None.
Presently pending claims: 1-6 and 14-20.
Presently appealed claims: 1-6 and 14-20.

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IV. STATUS OF THE AMENDMENTS

No claims were amended after the final Office action dated June 11, 2008.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The various embodiments are directed to switching between remote console sessions. At least some of the various embodiments are methods as in claim 1:¹

1. A method comprising:
logging into a remote computer by way of a management processor to initiate a remote console session; and {9, [0027], lines 6-11; Figure 4, 400}
switching between a default remote console session and a non-default remote console session. {9, [0027], lines 11-13; Figure 4, 402}

Other illustrative embodiments are methods as in claim 3:

3. The method of claim 1, wherein the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session. {9, [0027], lines 8-13}

Yet still other illustrative embodiments may be systems as in claim 14:

14. A computer system comprising a means for providing remote console to the computer system, wherein the means for providing switches to a default remote console session from a non-default remote console session.² {4, [0018], lines 1-3; Figure 1, 102}{5, [0020], lines 5-7; Figure 1, 102}{9, [0027], lines 11-13; Figure 4, 402}

¹ Reference to the Specification in this Appeal Brief will take the form {[page], [paragraph number], lines [lines within the paragraph]; Figure [] (if any), [reference numbers]}.

² Claim 14 is specifically identified as a means-plus-function limitation under Section 112, Sixth Paragraph.

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VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-6 and 14-20 are anticipated under 35 USC § 102(e) over Zhu et al. (Publication No. 20030084169).

VII. ARGUMENT

A. Section 102 Rejections over Zhu

1. Claims 1, 4-6

Claims 1 and 4-6 stand rejected as allegedly anticipated by Zhu. Claim 1 is representative of this grouping of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (*e.g.*, actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Zhu is directed to a system and method for accessing a target computer system from a remote location using a remote computer. **{Zhu Title}**. Zhu's

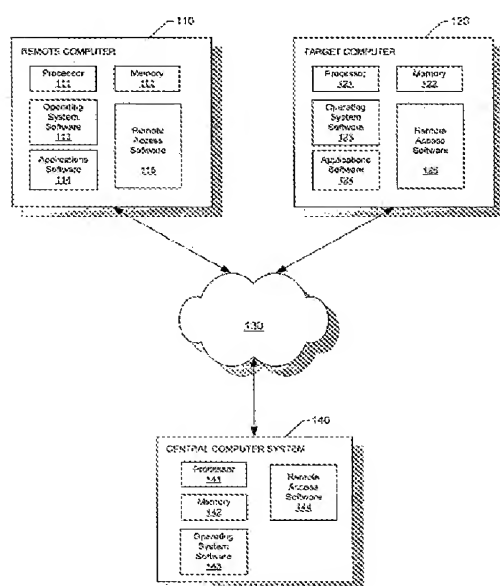


Figure 1 is reproduced immediately to the left. In particular, Zhu teaches that a user connects to the central computer 140 through the remote computer 110. **{Zhu Paragraph [0018], lines 1-2}**. Once in communication with the central computer system 140, the user may then connect to the target computer 120 **through the central computer system**. **{Zhu Abstract; Paragraph [0018], lines 3-5}**. Stated otherwise, the remote computer does

not connect directly to the target computer 120. The console session initiated in the system is a connection to the central computer system 140 by both the remote computer system 110 and the target computer system 120, and all data communications flow through the central computer system. **{Zhu Paragraphs [0046]-[0047]}**.

In Zhu, the type of communication between the remote computer 110 and the central computer 140, as well as the type of communication

between the target computer 120 and the central computer system 140, is unchanging. As for the remote computer system 110, a connection is established based on remote access software 115 executed on the main processor 111 of the remote computer system, and remote access software 144 executed on the main processor 141 of the central computer system. **{Zhu Paragraph [0020] (as for the remote computer); Paragraph [0025] (as for the central computer)}**. Likewise for the target computer system 120, a connection is established based on remote access software 125 executed on the main processor 121 of the remote computer system, and remote access software 144 executed on the main processor 141 of the central computer system. **{Zhu Paragraph [0022] (as for the target computer); Paragraph [0025] (as for the central computer)}**.

Thus, the sessions established between the various computer systems of Zhu are always based on software executed on the main processor. In the parlance of the current specification, the sessions are software-based console sessions, as opposed to hardware-based console sessions using a separate management processor.

Representative claim 1, by contrast, specifically recites:

1. A method comprising:
logging into a remote computer by way of a management processor to initiate a remote console session; and
switching between a default remote console session and a non-default remote console session.

Appellants respectfully submit that Zhu fails to expressly or inherently teach such a method. In particular, Zhu teaches only a software-based console session (*i.e.*, performed by software on the main system processor). Zhu fails to expressly or inherently teach a second, management, processor in any of the Zhu computer systems, and thus fails to teach “logging into a remote computer by way of a

management processor to initiate a remote console session.” For this reason alone the rejections should be overturned and the claims set for issue.

Moreover, the type of session between each computer systems remains unchanged. For example, if logging onto the central computer system 140 is considered to be the claimed “logging into a remote computer system” (which Appellants do not admit), then Zhu fails to teach any change in the type of console sessions. The communications exchanged between the remote computer system and the central computer system **are all a software-based console session** (*i.e.*, performed by software on the main system processor). Even if the connection is continued to the target computer system 120, the connection between the remote computer system 110 and central computer system 140 remains unchanged. Even if it is the connection to the target computer system 120 that is considered to be the claimed “logging into a remote computer system” (which Appellants do not admit), Zhu still fails to teach any change in the type of console session. In this second example, the communication between the remote computer and the central computer remains unchanged, and Zhu fails to teach any change in the type of connection between the central computer system 140 and the target computer system 120. Thus, in neither case does Zhu teach “switching between a default remote console session and a non-default remote console session.” For this additional reason the rejection should be reversed and the claims set for issue.

With regard to claim interpretation, the Manual of Patent Examining Procedures (MPEP) states:

During patent examining, the pending claims must be “given their broadest reasonable interpretation **consistent with the specification.**”

{MPEP 8th, Rev. 3, August 2005, § 2111, p. 2100-46 (emphasis added)}. The Office action of June 11, 2008 takes an interpretation of the claim terminology that is inconsistent with the specification. In particular, the Office action equates default and non-default console sessions to sharing of computer applications during the console session.

[S]witching between a default remote console session and a non-default remote console session (enabling users to share computer applications during a data conference using default settings...).

{Office action of June 11, 2008, Page 4, paragraph spanning pages 4 and 5}.

Appellants acknowledge that in rejecting claims the broadest reasonable interpretation is used; however, Appellants respectfully submit that it is wholly unreasonable, and certainly not consistent with the specification, to distort the console sessions types described in the specification (*i.e.*, hardware-based using a management processor, and software-based using the main processor) into sharing of applications during a conference.

Based on the foregoing, Appellants respectfully request that the rejections of the claims of this group be reversed, and the claims set for issue.

2. Claims 2 and 3

Claims 2 and 3 stands rejected as allegedly anticipated by Zhu. Claim 3 is representative of this grouping of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (*e.g.*, actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Claim 3 has all the limitations of claim 1, and also specifically recites:

3. The method of claim 1, wherein the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session.

Representative claim 3 thus specifically recites that the default remote console session is software-based and the non-default is hardware-based. Consistent with the specification, the differences in these terms deal with the extent of involvement of a management processor in a console sessions. Because Zhu fails to teach a separate management processor in any of the Zhu computer systems, Zhu cannot teach the claim limitations. For this reason alone the rejection should be overturned and the claims set for issue.

Moreover, even if hypothetically considered proper to construe the default and non-default sessions of claim 1 as related to sharing of applications (which

Appellants do not admit is proper), Zhu expressly teaches the connections between the computer systems remains constant, even in view of sharing applications. Thus, Zhu fails to teach a “default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session.”

Representative claim 3 has all the limitations of claim 1, and is allowable for at least the same reasons, as wells for the additional limitations therein.

3. Claims 14-20

Claims 14-20 stand rejected as allegedly anticipated by Zhu. Claim 14 is representative of this grouping of claims. The grouping should not be construed to mean the patentability of any of the claims may be determined in later actions (*e.g.*, actions before a court) based on the groupings. Rather, the presumption of 35 USC § 282 shall apply to each of these claims individually.

Claim 14 specifically recites:

14. A computer system comprising a means for providing remote console to the computer system, wherein the means for providing switches to a default remote console session from a non-default remote console session.

Claim 14 is clearly written in means-plus-function terminology, invoking 35 USC § 112, Sixth Paragraph. Section 112, Sixth Paragraph, recites:

An element in a claim for a combination may be expressed as a means or step for performing a specified function without recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification or equivalents thereof.

{35 USC § 112, Sixth paragraph}. Even a cursory review of the specification reveals that the management processor 102 is the structure corresponding to the function, and the management processor 102 is separate and apart from the main processor 106. Thus, in order to anticipate the representative claim, Zhu would have to teach a computer system with a management processor with the claimed capability.

Appellants respectfully submit that the Office action fails to make a *prima facie* case of anticipation regarding representative claim 14. The Office action merely parrots rejection of claim 1 (a method claim). "Claim 14 is rejected under the same rational set forth in claim 1." **{Office action of June 11, 2008, Page 6, first full paragraph}**. Thus, the Office action fails to point to any structure in Zhu to anticipate the limitation. Moreover, Zhu fails to expressly or inherently teach a computer system having a management processor separate from the main processor.

Based on the foregoing, Appellants respectfully request that the rejections of the claims of this group be reversed, and the claims set for issue.

B. Conclusion

For the reasons stated above, Appellants respectfully submit that the Examiner erred in rejecting all pending claims. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

/MES/

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VIII. CLAIMS APPENDIX

1. (Original) A method comprising:
logging into a remote computer by way of a management processor to
initiate a remote console session; and
switching between a default remote console session and a non-default
remote console session.
2. (Original) The method of claim 1, wherein the default remote console
session is a hardware-based remote console session and the non-default remote
console session is a software-based remote console session.
3. (Original) The method of claim 1, wherein the default remote console
session is a software-based remote console session and the non-default remote
console session is a hardware-based remote console session.
4. (Original) The method of claim 1, wherein the default remote console
session is adjustable between a hardware-based remote console session and a
software-based remote console session.
5. (Original) The method of claim 1, wherein switching further comprises:
determining availability of the default remote console session;
disabling the non-default remote console session; and
enabling the default remote console session.
6. (Original) The method of claim 1, wherein the logging step further
comprises logging into the management processor comprising an application-
specific integrated circuit, a microcontroller and a memory for communication
between the remote computer and the management processor.
- 7.–13. (Cancelled).

14. (Original) A computer system comprising a means for providing remote console to the computer system, wherein the means for providing switches to a default remote console session from a non-default remote console session.

15. (Original) The computer system of claim 14, wherein the default remote console session is a hardware-based remote console session and the non-default remote console session is a software-based remote console session.

16. (Original) The computer system of claim 14, wherein the default remote console session is a software-based remote console session and the non-default remote console session is a hardware-based remote console session.

17. (Original) The computer system of claim 14, wherein the default remote console session is adjustable between a software-based remote console session and a hardware-based remote console session.

18. (Original) The computer system of claim 14, wherein the means for providing further comprises:

- an application-specific integrated circuit; and
- a memory coupled to the application-specific integrated circuit.

19. (Original) The computer system of claim 18, wherein the memory enables data transfer between the computer system and the means for providing.

20. (Original) The computer system of claim 14, wherein the means for providing:

- ascertains availability of the default remote console session;
- ensures the coupling of the computer system and the means for providing;
- disables the non-default remote console session; and
- enables the default remote console session.

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IX. EVIDENCE APPENDIX

None.

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X. RELATED PROCEEDINGS APPENDIX

None.